IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 843 OF 2007
IN
SUIT NO. 530 OF 2007

Indamer Company Pvt. Ltd. ... Plaintiff.

V/s.

Airport Authority of India & Ors. ... Defendants.

Mr. Paritosh Jaiswal with Ms. S. Deshpande i/b. M/s. Haresh Mehta & Co. for the Plaintiff.
Mr. Rajendra Gurjar i/b. Juris Consulta for Defendant 1.
Mr. Zal Andhyarujina i/b. M/s. Wadia Ghandy & Co. for Defendant 2.
Mr. D.D. Madon, Sr. Counsel with Mr. J.B. Mitra with Mr. Zarik Dastur i/b. J. Sagar Associates for Defendant 3.

CORAM : DR. D.Y. CHANDRACHUD,J.

20TH DECEMBER 2007.

P.C. :-

. On 20th December 2006, an order was passed by this Court incorporating an undertaking tendered by the Third Defendant in the following terms :-

1. The Company do hereby undertake to allow access for aircraft, equipments and personnel of the said M/s. Indemar. M/s. Megapode and/or other occupants, if any, on round the clock basis on the land allotted to the Company by AAI.

2. This Deed has been issued on the day, date and place mentioned hereunder."

2. Counsel appearing on behalf of the Third Defendant has fairly stated before the Court that the Third Defendant unconditionally agrees to abide by the undertaking. Counsel for the Third Defendant, however, submits that in order to streamline the actual implementation of the provision for access, it would be appropriate if the Plaintiff furnishes a tentative schedule for each working day, on or before 5.00 p.m. on the previous day so as to enable the Third Defendant to know in advance of the schedule of arrival of aircraft. It has been submitted that the Third Defendant should be provided an hours' notice in the event that the schedule is to be deviated from. The Plaintiff has during the course of the hearing indicated that it is not averse to providing reasonable

notice of about an hour prior to arrival of aircraft.

3. It would not be proper for this Court to allow a deviation from the undertaking which was tendered before the Court on 20th December 2006. Nor is any such submission made before the Court. It would be appropriate and proper if parties deal with each other reasonably, having regard to the difficulties which are mentioned in paragraphs 4 and 5 of the affidavit in support of the Third Defendant.

4. In the circumstances, in order to facilitate the operations of the respective parties, the following directions are issued :-

(i) The Plaintiff will endeavour to furnish to the Third Defendant, preferably by 5.00 p.m. on every working day, a tentative schedule of the movement of aircraft at the hangar of the Plaintiff for the succeeding day;

(ii) In the event that a change is necessitated from the aforesaid schedule the Plaintiff shall endeavour to furnish an hour's

notice to the Third Defendant before the arrival of aircraft. This shall however not preclude the Plaintiff from furnishing a notice of lesser deviation in the event of any unavoidable circumstances;

(iii) The terms of the undertaking shall continue to be observed in all respects as provided therein without any let or hindrance. The arrangements envisaged in clauses (i) and (ii) shall not be construed as enabling the Third Defendant to refuse to comply with the terms of the undertaking;

(iv) On the request of the learned Counsel for the Second Defendant, it is clarified that this order shall not affect or prejudice the rights and powers of the Second Defendant.